

REMARKS

Responsive to the lack of unity determination in the Office Action mailed on May 11, 2004, applicants provisionally elect Group I, claims 25-36 and 48, with traverse.

The grounds for traverse are as follows:

The international examiner found no lack of unity, applying the same legal standard to the identical facts. As a result, the U.S. Patent Office cannot now contend that examination of the pending claims in the present application would pose an undue searching burden. Indeed, the U.S. Examiner has the considerable benefit of the search results generated by the international examiner.

Moreover, applicants note that the Official Action fails to explain why applying the identical legal standard to the identical claims, the opposite result is now being reached in the present U.S. national phase application relative to the international application.

Applicants further submit that the Official Action fails to comply with the requirements of PCT Rules 13.1 and 13.2, in seeking to justify the lack of unity determination. Specifically, the definition of "special technical feature" and PCT Rule 13.2 is art-based. Therefore, proper lack of unity determination would require citation of a reference showing the "special technical feature."

In imposing the lack of unity determination, the Official Action states that the technical feature linking the inventions of Groups I-XI is the AP2-domain containing transcription factors and the polynucleotides encoding them. The Official Action then further states that since these were known in the art, they cannot constitute a special technical feature within the meaning of PCT Rule 13.2, because there would be no contribution over the art.

However, applicants submit that the technical feature linking the alleged groups is not any and all AP2-domains containing a transcription factor but rather an AP2-domain containing transcription factors that are involved in the response of a plant cell to jasmonate. Since there is no art of record that discloses this class of AP2-domain containing transcription factors, this class of transcription factors does make a contribution over the prior art and thus constitutes a special technical feature in the meaning of PCT Rule 13.2.

Thus, from the above discussion, it is believed to be apparent that the lack of unity determination is improper and must be withdrawn.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any

overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

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